

SERVICE DATE - LATE RELEASE SEPTEMBER 25, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-308 (Sub-No. 3X)

CENTRAL MICHIGAN RAILWAY COMPANY–
ABANDONMENT EXEMPTION–IN SAGINAW COUNTY, MI

Decided: September 25, 2003

By petition filed on July 16, 2003, the Central Michigan Railway Company (CMR) seeks an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon approximately 1.77 miles of railroad, extending from milepost 2.83 at the western end of CMR's railroad bridge over Interstate Highway 75 to milepost 4.60 in Saginaw County, MI. Pursuant to 49 U.S.C. 10502(b), the Board served and published a notice in the Federal Register (68 FR 46263) on August 5, 2003, instituting an exemption proceeding.

The petition indicates that abandonment will enable the Michigan Department of Transportation (MDOT) to go forward with plans to widen Interstate Highway 75. CMR's line currently runs over Interstate Highway 75 on a bridge whose abutments present an obstacle to widening the highway. CMR estimates that it would cost more than \$5 million to rebuild the bridge. CMR and MDOT have agreed that MDOT may, if the Board authorizes the abandonment of the line, remove the bridge when it widens the highway. MDOT agreed to pay CMR more than \$3 million for a release from the carrier from all damages and future claims resulting from the bridge removal. CMR further claims that operations on the 1.77-mile segment are unprofitable, that traffic levels and revenues do not justify continued operation and maintenance and that the line needs substantial rehabilitation to remain in service.

The line currently serves only one active shipper, Plastatech Engineering Ltd. (Plastatech), a manufacturer of vinyl roofing laminates. Plastatech objects to the abandonment, contending that it has invested more than \$100,000 to install rail trackage and unloading facilities to enable it to receive PVC resin by rail. The shipper states further that its use of the line has consistently increased and that it plans to receive other products by rail. Plastatech indicates that it would incur substantially higher transportation costs if it received all shipments by truck. Plastatech contends that the payment from MDOT should provide ample funding for CMR to arrange continued rail service at another location.

In its motion for expedited decision filed on September 9, 2003, CMR states that it has offered to provide transloading service to Plastatech for PVC resins and would continue to store PVC shipper cars on its line, without car hire charges, so that Plastatech could continue to order PVC in carload

volumes. CMR states further that it would also offer Plastatech a rate reduction in conjunction with the transload operation, using cost savings from the abandonment to offset costs of the trucking portion of the transload operation. CMR indicates that, prior to 2000, Plastatech had received all of its PVC resin by truck, and that much of that moved in transload service at Willis, MI, originating on another carrier.

On September 25, 2003, Plastatech filed a reply to CMR's motion for expedited decision. Plastatech urges the Board to deny CMR's motion and to disregard what Plastatech characterizes as improper rebuttal evidence.

This is not the typical abandonment proposal initiated by a carrier based solely on alleged losses attributable to serving the line at issue. Without getting into whether or not operations over the line are a burden on CMR, the record here indicates that abandonment would facilitate plans by MDOT to widen Interstate Highway 75, a demonstrable public benefit. If the line is abandoned, CMR will, pursuant to its agreement with MDOT, receive approximately \$3 million to compensate it for the loss of the line segment. The offer by CMR described above and recited in note 3 of the carrier's motion for expedited decision seems to be a good faith attempt to confer some compensation on Plastatech for the loss of the rail service it has used in recent years and could form the basis for an agreement between CMR and Plastatech regarding compensation. While the Board could render a decision on the existing record, this appears to be a situation where private resolution of the parties' disagreement could benefit both the carrier and the shipper. Under the circumstances, the parties will be directed to undertake negotiations to attempt to reach an agreement in this proceeding and to advise the Board of the results of the negotiations by October 16, 2003.

It is ordered:

1. The parties are directed to negotiate and to advise the Board of the results of negotiations by October 16, 2003.
2. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary